IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 442 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHWINBHAI H ACHARYA

Versus

DAHYALAL AMRUTLAL

Appearance:

1. Criminal Appeal No. 442 of 1991

MR BP TANNA for Appellant No. 1

NOTICE SERVED for Respondent No. 1

MR KT DAVE APP for Respondent No. 2

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 28/11/2002

ORAL JUDGEMENT

#. This appeal is filed by the appellant - original complainant - Food Inspector and challenged the order of learned Judicial Magistrate First Class (Municipal), Rajkot, acquitting the accused for the offences punishable under Sections 7 (i) and 16 (1) (a) (i) of the

Provisions of Food Adulteration Act, while disposing of the Criminal Case being Criminal Case No. 269 of 1985 filed by the appellant Food Inspector. When the appellant has filed appeal challenging the order of acquittal, this Court has while granting leave to appeal has admitted the appeal as per order dated 3rd July, 1991. Accordingly, appeal is notified before me for final hearing.

#. Mr. Tanna, learned Senior Advocate has taken me through the paper book consisting of evidence of prosecution witnesses and the documentary evidence on the record of the case and the judgement under challenge. It is the contention of Mr. Tanna that learned Magistrate has committed error while appreciating the document namely sanctioned to prosecute the accused passed by the local authority by holding that the sanctioned to prosecute accused is based without any application of mind and by deciding the issue regarding sanctioned to prosecute, the learned Magistrate has acquitted the accused only on that ground, by holding that the sanctioned to prosecute the accused issued by the authority is not legal and valid. Accordingly, Mr. Tanna has urged that the order of acquittal rendered by the learned Magistrate deserves to be set aside.

#. The respondent accused is duly served and has chosen not to participate this proceedings.

#. I have also heard Mr. K.T. Dave, learned APP, who appeared for the respondent State.

#. Considering the submissions made before me, it transpires from the evidence that the appellant original complainant was working as Food Inspector, attached to Rajkot Municipal Corporation, has purchased a sample of "Raj Mukhvas" from the respondent accused, who was having Pan Masala shop. It is the case of the complainant that while taking such sample of "Raj Mukhwas", he has taken all precautions and followed the necessary procedure prescribed under the Provisions of Food Adulteration Act and Rule (hereinafter referred as "Act" and "Rules" for short) and after purchasing the said article of "Raj Mukhvas", he has also sent the said sample to Public Analysis for analysis and as per report of the Public Analysis, the said substance was found adulterated and it contained addition of Saccharin and according to the opinion of the Public Analysis, the same is contraband under the provisions of Prevention of Food Adulteration Act and Rules.

#. As found from the findings recorded by the learned Magistrate, it is an admitted fact that the sample of "Raj Mukhwas" was contained saccharin and said sample was purchased by the complainant from the shop of the respondent accused and as per Analysis report, there is an addition of Saccharin. The learned Magistrate has also accepted the case of the complainant in respect of the purchase of "Raj Mukhwas" from the accused by following provisions of Act and Rules. However, while examining the order of sanction to prosecute issued by the authority, the learned Magistrate has held that the sanction to prosecute accused as provided under Section 20 of the Act is defective and on that ground, the learned Magistrate has acquitted the accused.

#. Accordingly the point, which this Court is required to consider is only limited to the effect that whether finding recorded by the learned Magistrate by holding that the sanctioned to prosecute respondent accused under the Act is illegal and without application of mind, is proper or nor and accordingly, I have gone through the sanctioned issued by the Competent Authority to prosecute the accused in view of the reports submitted by the Food Inspector. The Trial Court has on examining the said document, namely sanctioned to prosecute the accused issued by the Competent Authority, has held that while issuing such sanctioned, no proper application of mind was there and because of non application of mind to prosecute the accused, the accused deserves to be acquitted from the charges levelled against him. It is also equally necessary for me while deciding this appeal to refer certain provisions of the Act and Rules and accordingly, Section 7 (i), (v) & Section 16 (1) (a) (i), (ii) of the Prevention of Food Adulteration Act is reads as under:-

"Section 7 :-Prohibition of manufacture, sale, etc. of certain articles of food. - No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute -

(i) any adulterated food.
(ii) xxx xxxx
(iii)xxx xxxx
(iv) xxx xxxx
(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder,
(vi) xxx xxxx

"Section 16 : Penalties :-

(1) Subject to the provisions of sub-section (1-A) if any person, -

(a) Whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any article of food -

(i) which is adulterated within the meaning of sub-clause (m) of Cl. (i-a) of Section 2 or misbranded within the meaning of Cl. (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

(ii) other than an article of food referred to in sub-clause (i) in contravention of any of the provisions of this Act or of any rule made thereunder; or

(b) xxx xxx xxx

It is equally necessary to reproduce Rule 47 here :-

Rule 47 :- Restriction on use and sale of artificial sweeteners :-

"No artificial sweetener shall be added to any article of food :-

"Provided that artificial sweetener may be used in following food articles in quantities not exceeding the limits shown against them and shall bear the lable declaration as provided in Cls. (1) and (2) of sub-rule (ZZZ) of rule 42."

In light of above provisions and on considering the order of sanctioned issued by the Competent Authority, which is at Ex. 26, it shows that the Commissioner of Rajkot Municipal Corporation has as per order dated 4.10.1985 issued sanctioned to prosecute accused Shri Dahyalal Amrutlal, respondent accused for the offences punishable under the Prevention of Food Adulteration Act, 1954. The Commissioner had while perusing the report submitted by the Food Inspector dated 30th September, 1985, had issued sanctioned order to file complaint against accused as provided under Section 20 of

the Act and it further shows that the sample, which was sent for analysis and found adulterated was "Raj Mukhwas" and accordingly, sanctioned was issued for breach of Section 7 (i) and 16 (a) (i) of the Prevention of Food Adulteration Act. It further shows that while issuing such sanctioned, he has examined reports submitted by the Food Inspector attached with the documents and ultimately, sanctioned to prosecute the accused was issued. This sanctioned order is on the record at Ex. 26.

#. On going through the report submitted by the Food Inspector before the Commissioner, Rajkot Municipal Corporation dated 30th September, 1985, it shows that he has purchased sample of "Raj Mukhwas" on 25th June, 1985 from the shop of the accused after following procedure prescribed under the Act and Rules and the said sample was sent to Public Analysis for analysis and as per report dated 19th July, 1985, the said sample was found adulterated and according to the complainant the accused has committed an offence for the breach of Section 7 (i) punishable under Section 16 (a)(i) of the Act and the complainant has requested the Commissioner for sanction to prosecute accused. It further transpires that while sending such report, the complainant has also forwarded various documents including the report of the laboratory and the panchnama regarding taking sample by him from the accused in presence of panchas. The learned Magistrate has while examining the evidence led before him, has in term held that sanctioned to prosecute the accused was not legal. It is the case of the complainant that he has purchased the sample of "Raj Mukhwas" after following procedure prescribed under the Act and Rules from the accused and as per report, the sample has having addition of saccharin. There is no standard under the Act and Rules for Mukhwas. Accordingly, while issuing sanction to prosecute the accused, the proper section would be the breach of Section 7 (v) read with Rule 47 and the punishment as provided for such breach should be under Section 16 (i) (a) (ii) of the Act and accordingly, the while issuing sanctioned, the authority has not properly applied its mind and learned Magistrate has in term held that sanctioned to prosecute accused is not proper and legal. Considering that sanctioned to prosecute accused passed by the Competent Authority, it shows that the sanctioned to prosecute the accused is not proper and legal and learned Magistrate has while examining the document at Ex. 26, has in term held that the same is not legal and proper. The learned Magistrate has in detailed, discussed the evidence led before him and also discussed the order issuing sanctioned to prosecute

accused by the Competent Authority in light of the provisions of the Act and Rules and the learned Magistrate has acquitted the accused on the ground that sanctioned to prosecute accused is not legal and valid.

#. On considering the submissions made before me and in light of the provisions of the Act and Rules, in my view, the learned Magistrate has not committed any error by holding that the sanctioned to prosecute accused shows non application of mind. Accordingly, while reappreciating the evidence, it will be difficult for this Court to accept the contention raised before me that the learned Magistrate has committed error while acquitting the accused. No other points were raised before me and accordingly, there is no substance in the present appeal and appeal is dismissed. The judgement and order dated 29.1.1990 recorded by the learned Judicial Magistrate First Class (Municipal), Rajkot in Criminal Case No. 269 of 1985 acquitting the accused for the offenses punishable under Sections 7 (i) and 16 (1)(a)(i) of the Prevention of Food Adulteration Act is hereby confirmed.

(D.K. Trivedi, J.)
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